

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

IN THE MATTER OF:

MOTOROLA 52<sup>ND</sup> STREET SUPERFUND SITE

Paul McCoy's Laundry and Dry Cleaners, Inc.  
1624 East Washington Street  
Phoenix, AZ

RESPONDENT

Proceeding Under Sections 104, 107, 122(a),  
and 122(d)(3) of the Comprehensive  
Environmental Response, Compensation,  
and Liability act as amended  
(42 U.S.C Sections 9604, 9607, 9622(a),  
9622(d)(3).

U.S. EPA Docket No. 2006-05

ADMINISTRATIVE SETTLEMENT AGREEMENT and ORDER ON CONSENT  
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

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## I. INTRODUCTION

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Paul McCoy's Laundry and Dry Cleaners, Inc. ("Respondent"). The Settlement Agreement concerns the preparation and performance of, and reimbursement for all costs incurred by EPA in connection with, a Focused Remedial Investigation and Feasibility Study ("Focused RI/FS") for the Paul McCoy's Laundry and Dry Cleaners Site ("Site"), located within the third operable unit of the Motorola 52<sup>nd</sup> Street Superfund Site in Phoenix, Arizona.

## II. JURISDICTION AND GENERAL PROVISIONS

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability act, as amended, 42 U.S.C. Sections 9604, 9607, 9622(a), 9622(d)(3) (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926, further delegated to Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-c, and further redelegated to Region IX Superfund Branch Chiefs by the Regional Administrator of Region IX on September 25, 1997.

3. The Respondent agrees to undertake all actions required by the terms and conditions of this Settlement Agreement. Respondent does not admit the validity of the findings of facts or conclusions of law and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement Agreement, such findings of fact or conclusions of law. In any action by EPA or the United States to enforce the terms of this Settlement Agreement, Respondent consents to and agrees not to contest the authority or jurisdiction of the Superfund Branch Chief to issue or enforce this Settlement Agreement, and

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2 agrees not to contest the validity of this Settlement Agreement or its terms.

3 4. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§  
4 9604(b)(2) and 9622(j)(1), EPA notified the Arizona Department of Environmental Quality,  
5 Arizona Game and Fish Department, U.S. Department of Defense, U.S. Department of Interior,  
6 National Oceanic and Atmospheric Administration, and U.S. Department of Agriculture on  
7 September 3, 2003 and the U.S. Department of Energy on October 3, 2003 of negotiations with  
8 potentially responsible parties regarding the release of hazardous substances that may have  
9 resulted in injury to the natural resources under Federal and State trusteeship.

### 10 11 **III. PARTIES BOUND**

12 5. This Settlement Agreement shall apply to and be binding upon EPA and shall be  
13 binding upon the Respondent, its agents, successors, assigns, officers, directors and principals.  
14 Respondent is responsible for carrying out all actions required of it by this Settlement  
15 Agreement. Respondent's signatory to this Consent Order certifies that he/she is authorized to  
16 execute and legally bind the party he/she represents to this Settlement Agreement. No change in  
17 the ownership or corporate status of the Respondent or of the Site shall alter Respondent's  
18 responsibilities under this Settlement Agreement.

19 6. Respondent is liable for carrying out all activities required by this Settlement  
20 Agreement.

21 7. The Respondent shall provide a copy of this Settlement Agreement to any  
22 subsequent owners or successors of the Site before ownership rights or stock or assets in a  
23 corporate acquisition are transferred. Respondent shall provide a copy of this Settlement  
24 Agreement to all contractors, subcontractors, laboratories, and consultants that are retained to  
25 conduct any work performed under this Settlement Agreement, within 14 days after the effective  
26 date of this Settlement Agreement or the date of retaining their services, whichever is later.  
27 Respondent shall condition any such contracts upon satisfactory compliance with this Settlement  
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2 Agreement. Notwithstanding the terms of any contract, Respondent is responsible for  
3 compliance with this Settlement Agreement and for ensuring that their subsidiaries, employees,  
4 contractors, consultants, subcontractors, agents and attorneys comply with this Settlement  
5 Agreement.

#### 6 7 **IV. STATEMENT OF PURPOSE**

8 8. In entering into this Settlement Agreement, the objectives of EPA and the  
9 Respondent are: (a) to determine the nature and extent of contamination and any threat to the  
10 public health, welfare, or the environment caused by the release or threatened release of  
11 hazardous substances, pollutants or contaminants at or from the Site, by conducting a remedial  
12 investigation; (b) to determine and evaluate alternatives for remedial action (if any) to prevent,  
13 mitigate or otherwise respond to or remedy any release or threatened release of hazardous  
14 substances, pollutants, or contaminants at or from the Site, by conducting a feasibility study; and  
15 (c) to recover response costs incurred by EPA with respect to the Site.

16 9. This Settlement Agreement and Statement of Work require Respondent to conduct  
17 work only with respect to the Contaminants of Concern as identified in Attachment A of the  
18 Statement of Work. The activities conducted under this Settlement Agreement are subject to  
19 approval by EPA and shall provide all appropriate necessary information for the Focused RI/FS,  
20 and for a record of decision that is consistent with CERCLA and the National Contingency Plan  
21 (NCP), 40 C.F.R. Part 300. The activities conducted under this Settlement Agreement shall be  
22 conducted in compliance with all applicable EPA guidance, policies, and procedures.

#### 23 24 **V. DEFINITIONS**

25 10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement  
26 which are defined in CERCLA or in regulations promulgated under CERCLA shall have the  
27 meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are  
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2 used in this Settlement Agreement or in the appendices attached hereto and incorporated  
3 hereunder, the following definitions shall apply:

4 a. "CERCLA" shall mean the Comprehensive Environmental Response,  
5 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

6 b. "Settlement Agreement" shall mean this Administrative Settlement Agreement  
7 and Order on Consent, the Statement of Work, all appendices attached hereto listed in Section  
8 XXX (Severability/ Integration/Appendices) and all documents incorporated by reference into  
9 this document including without limitation EPA-approved submissions. EPA-approved  
10 submissions are incorporated into and become a part of the Settlement Agreement upon approval  
11 by EPA. In the event of conflict between this Settlement Agreement and any Appendix or other  
12 incorporated documents, this Settlement Agreement shall control.

13 c. "Day" shall mean a calendar day. In computing any period of time under this  
14 Consent Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the  
15 period shall run until the close of business of the next working day.

16 d. "Effective Date" shall be the effective date of this Settlement Agreement as  
17 provided in Section XXXII (Effective Date).

18 e. "EPA" shall mean the United States Environmental Protection Agency and any  
19 successor departments or agencies of the United States.

20 f. "Future Response Costs" shall mean all costs, including, but not limited to,  
21 direct and indirect costs, that the EPA has incurred, but has not billed to the Respondent prior to  
22 the Effective Date of this Settlement Agreement, or will incur in connection with the Site in  
23 reviewing or developing plans, reports and other items pursuant to this Settlement Agreement,  
24 verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement  
25 Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory  
26 costs, the costs incurred pursuant to Paragraph 49 (costs and attorneys fees and any monies paid  
27 to secure access, including the amount of just compensation), Paragraph 30 (emergency  
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2 response) and Paragraph 81 (Work takeover). Future Response Costs shall not include Past  
3 Response Costs as they are specifically defined in this Settlement Agreement.

4 g. "Interest" shall mean interest at the rate specified for interest on investments of  
5 the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded  
6 annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate  
7 of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject  
8 to change on October 1 of each year.

9 h. "Motorola 52<sup>nd</sup> Street Superfund Site" shall mean Operable Units 1, 2, and 3 of  
10 the Motorola 52<sup>nd</sup> Street Superfund Site, located within the approximate boundaries of 52<sup>nd</sup> Street  
11 to the east, 7<sup>th</sup> Avenue to the west, McDowell Road to the north and Buckeye Road to the  
12 southwest, and depicted generally on the map, attached as Appendix B.

13 i. "National Contingency Plan " or "NCP" shall mean the National Oil and  
14 Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of  
15 CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

16 j. "Paragraph" shall mean a portion of this Consent Order identified by an Arabic  
17 numeral.

18 k. "Parties" shall mean EPA and Respondent.

19 l. "Past Response Costs" shall mean all costs, including, but not limited to, direct  
20 and indirect costs, that the EPA paid in connection with the Site through June 30, 2005, plus  
21 Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

22 m. "Respondent" shall mean Paul McCoy's Laundry and Dry Cleaners, Inc.

23 n. "Section" shall mean a portion of this Consent Order identified by a Roman  
24 numeral.

25 o. "Site" shall mean the Paul McCoy's Laundry and Dry Cleaners facility,  
26 located at 1624 East Washington Street in Phoenix, Arizona, within the Motorola 52<sup>nd</sup> Street  
27 Superfund Site.



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2 p. "Statement of Work" or "SOW" shall mean the Statement of Work for  
3 development of a Focused RI/FS for the Site, as set forth in Appendix A to this Settlement  
4 Agreement. The Statement of Work is incorporated into this Settlement Agreement and is an  
5 enforceable part of this Settlement Agreement as are any modifications made thereto in  
6 accordance with this Settlement Agreement.

7 q. "Waste Material" shall mean (1) any "hazardous substance" under Section  
8 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section  
9 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of  
10 RCRA, 42 U.S.C. § 6903(27).

11 r. "Work" shall mean all activities Respondent is required to perform under this  
12 Settlement Agreement and Statement of Work.

## 13 14 VI. EPA'S FINDINGS OF FACT

15 11. The Motorola 52<sup>nd</sup> Street Site is located in Phoenix, Arizona and was listed on the  
16 EPA Superfund National Priorities List on October 4, 1989, pursuant to Section 105 of  
17 CERCLA, 42 U.S.C. §9605. Releases of hazardous substances, primarily volatile organic  
18 compounds such as trichloroethylene ("TCE"), tetrachloroethylene ("PCE"), and trichloroethane  
19 ("TCA"), from various facilities within the site boundaries have contributed to the groundwater  
20 contamination at the Motorola 52<sup>nd</sup> Street Site. The response activities are conducted in three  
21 operable unit study areas.

22 12. The Paul McCoy's Laundry and Dry Cleaners Site ("Site") is located at 1624 East  
23 Washington Street, Phoenix, Arizona. The Site is located in the third operable unit study area of  
24 the Motorola 52<sup>nd</sup> Street Site.

25 13. The Site operated as a commercial laundry from the 1940's through 1990. Since  
26 1990, the Site has operated as a laundry folding and storage area only.

27 14. The groundwater within operable unit three is contaminated with VOCs above the  
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2 Federal and State drinking water standards including, TCE , PCE, and VOC degradation by-  
3 products, cis-1,2-dichloroethylene and 1,1-dichloroethylene. TCA, as well as additional VOC  
4 degradation by-products such as 1,1-dichloroethane, 1,2-dichloroethane, trans-1,2-  
5 dichloroethylene, and vinyl chloride have also been detected.

6 15. The Facility used PCE and petroleum distillates in its dry cleaning operations. A  
7 1991 investigation shows PCE, TCE, and degradation products, 1,1-DCE and cis-1,2-DCE in soil  
8 gas samples collected outside the operations area. Three underground storage tanks were  
9 removed in the same year and soil samples were collected from the excavations. High levels of  
10 petroleum distillates were detected, but could not be quantified due to their interference with the  
11 analytical method. PCE was detected in one sample at 810 ug/kg. Groundwater samples  
12 collected from monitoring wells located downgradient from the facility yielded maximum  
13 concentrations of 355 ug/L for TCE, 76 ug/L for TCA, 48 ug/L for PCE, and 1,090 for 1,1,-DCE.

14 16. Paul McCoy's Laundry and Dry Cleaners, Inc. is an Arizona corporation doing  
15 business in Phoenix, Arizona.

16 17. Respondent currently owns the Site and has owned the Site since 1969.  
17 Respondent operated the Site from 1969 until 1990.

## 18 19 **VII. CONCLUSIONS OF LAW AND DETERMINATIONS**

20 18. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C.  
21 Section 9601(9).

22 19. TCE, TCA, and PCE found at the Site, as identified in the Findings of Fact above  
23 are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. Section  
24 9601(14), or constitute "any pollutant or contaminant" that may present an imminent and  
25 substantial danger to public health or welfare under Section 104(a)(1) of CERCLA.

26 20. The presence of hazardous substances at the Site or the past, present or potential  
27 migration of hazardous substances currently located at or emanating from the Site, constitute  
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2 actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. Section  
3 9601(22).

4 21. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C.  
5 Section 9601(21).

6 22. Respondent is the owner and/or operator of the Facility, as defined by Section  
7 101(20) of CERCLA, 42 U.S.C. §9601(20), and within the meaning of Section 107(a)(1) or (2)  
8 of CERCLA, 42 U.S.C. §9607(a)(1) or (2) and is a responsible party under Sections 104, 107 and  
9 122 of CERCLA, 42 U.S.C. Sections 9604, 9607 and 9622.

10 23. The actions required by this Settlement Agreement are necessary to protect the  
11 public health or welfare or the environment, are in the public interest, 42 U.S.C. Section 9622(a),  
12 are consistent with CERCLA and the NCP, 42 U.S.C. Sections 9604(a)(1), 9622(a), and will  
13 expedite effective remedial action and minimize litigation, 42 U.S.C. Section 9622(a).

#### 14 15 **VIII. SETTLEMENT AGREEMENT AND ORDER**

16 24. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations,  
17 and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent  
18 shall comply with all provisions of this Settlement Agreement, including, but not limited to, all  
19 attachments to this Settlement Agreement and all documents incorporated by reference into this  
20 Settlement Agreement.

#### 21 22 **IX. WORK TO BE PERFORMED**

23 25. Selection of Contractors, Personnel. All work performed under this Settlement  
24 Agreement shall be under the direction and supervision of qualified personnel. Within 30 days  
25 of the effective date of this Settlement Agreement, and before the work outlined below begins,  
26 the Respondent shall notify EPA in writing of the names, titles, and qualifications of the  
27 personnel, including contractors, subcontractors, consultants and laboratories to be used in  
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2 carrying out such work. With respect to any proposed contractor, the Respondent shall  
3 demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC  
4 E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection  
5 and Environmental Technology Programs," (American National Standard, January 5, 1995), by  
6 submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP  
7 should be prepared in accordance with "EPA Requirements for Quality Management Plans  
8 (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by  
9 EPA.

10       26.     Activities and Deliverables. Respondent shall conduct activities and submit  
11 deliverables as provided by the attached Focused RI/FS Statement of Work ("SOW"), which is  
12 incorporated by reference, and is binding upon Respondent. All such work shall be conducted in  
13 accordance with CERCLA, the NCP, and EPA guidance including, but not limited to, the  
14 "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under  
15 CERCLA" (OSWER Directive # 9355.3-01), "Guidance for data Usability in Risk Assessment"  
16 (OSWER Directive #9285.7-05) and guidance referenced therein, as well as guidance referenced  
17 in the Statement of Work, as may be amended or modified by EPA. All work performed under  
18 the Settlement Agreement shall be in accordance with the schedules in the SOW, and in full  
19 accordance with the standards, specifications, and other requirements of the Focused RI/FS Work  
20 Plan, Health and Safety Plan, and Sampling and Analysis Plan, as initially approved or modified  
21 by EPA, and as may be amended or modified by EPA from time to time.

22       27.     Upon receipt of the draft Focused Feasibility Study Report, EPA will evaluate, as  
23 necessary, the estimates of the risk to the public and environment that are expected to remain  
24 after a particular remedial alternative has been completed. Respondent shall incorporate EPA's  
25 evaluation and analysis into the final Focused Feasibility Study Report that is submitted to EPA  
26 for review and approval.

27       26.     EPA reserves the right to stop Respondent from proceeding further, either  
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2 temporarily or permanently, on any tasks, activity or deliverable required by this Settlement  
3 Agreement.

4       29. Off-Site Shipment of Waste Material. Respondent shall, fourteen days prior to any  
5 off-site shipment of hazardous substances from the Site to an out-of-state waste management  
6 facility, provide written notification to the appropriate state environmental official in the  
7 receiving state and to EPA's Project Coordinator of such shipment of hazardous substances.  
8 However, the notification of shipments shall not apply to any such off-site shipments when the  
9 total volume of such shipments will not exceed 10 cubic yards. The notification shall be in  
10 writing, and shall include the following information, where available: (1) the name and location  
11 of the facility to which the hazardous substances are to be shipped: (2) the type and quantity of  
12 the hazardous substances to be shipped; (3) the expected schedule for the shipment of the  
13 hazardous substances: and (4) the method of transportation. Respondent shall notify the  
14 receiving state of major changes in the shipment plan, such as decision to ship the hazardous  
15 substances to another facility within the same state, or to a facility in another state. Prior to  
16 shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site  
17 location, Respondent shall obtain EPA's certification that the proposed receiving facility is  
18 operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C.  
19 §9621(d)(3), and 40 C.F.R. §300.440. Respondent shall only send hazardous substances,  
20 pollutants or contaminants from the Site to an off-site facility that complies with the  
21 requirements of the statutory provision and regulation cited in the preceding sentence.

22       30. Emergency Response and Notification of Releases. In the event of conditions  
23 posing an immediate threat to human health or welfare or the environment, Respondent shall  
24 immediately take all appropriate action. Respondent shall take these actions in accordance with  
25 all applicable provisions of this Settlement Agreement, including, but not limited to, the Health  
26 and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or  
27 threatened by the release. Respondent shall also immediately notify the EPA Project Coordinator  
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2 or, in the event of his/her unavailability, the Regional Duty Officer at (415) 947-4400, of the  
3 incident or Site conditions. In the event that Respondent fails to take appropriate response action  
4 and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response  
5 action not inconsistent with the NCP in the manner described in Section XXI (Payment of  
6 Response Costs).

7 31. In addition, in the event of any release of a hazardous substance from the Site,  
8 Respondent shall immediately notify the EPA Project Coordinator or Regional Duty Officer at  
9 (415) 947-4400, and the National Response Center at (800) 424-8802. Respondent shall submit  
10 a written report to EPA within 7 days after each release, setting forth the events that occurred and  
11 the measures taken or to be taken to mitigate any release or endangerment caused or threatened  
12 by the release and to prevent the reoccurrence of such a release. This reporting requirement is in  
13 addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. §9603(c),  
14 and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42  
15 U.S.C. §11004, *et seq.*

16 32. Focused Baseline Risk Assessment. Respondent will perform the Focused  
17 Baseline Risk Assessment in accordance with the SOW, Focused RI/FS Work Plan and  
18 applicable EPA guidance. The major components of the Baseline Risk Assessment include  
19 contaminant identification, exposure assessment, toxicity assessment, and human health and  
20 ecological risk characterization.

## 21 22 **X. MODIFICATION OF THE FOCUSED RI/FS WORK PLAN**

23 33. If at any time during the Focused RI/FS process, Respondent identifies a need for  
24 additional data, Respondent shall submit a technical memorandum documenting the need for  
25 additional data to the EPA Project Coordinator within 21 days of identification. EPA in its  
26 discretion will determine whether the additional data will be collected by Respondent and  
27 whether it will be incorporated into reports and deliverables.  
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2 34. EPA may determine that in addition to tasks defined in the initially approved  
3 Focused RI/FS Work Plan, other additional work may be necessary to accomplish the objectives  
4 of the Focused RI/FS as set forth in the Statement of Work for this Focused RI/FS. EPA may  
5 require that the Respondent perform these response actions in addition to those required by the  
6 initially approved Focused RI/FS Work Plan, including any approved modifications, if it  
7 determines that such actions are necessary for a complete Focused RI/FS. Respondent shall  
8 confirm its willingness to perform the additional work in writing to the EPA within 7 days of  
9 receipt of the EPA request or Respondent shall invoke dispute resolution. Subject to EPA  
10 resolution of any dispute, Respondent shall implement the additional tasks that EPA determines  
11 are necessary. Respondent shall complete the additional work according to the standards,  
12 specifications, and schedule set forth or approved by EPA in a written modification to the  
13 Focused RI/FS Work Plan or written work plan supplement. EPA reserves the right to conduct  
14 the work itself at any point, to seek reimbursement from Respondent, and or to seek any other  
15 appropriate relief. Nothing in this Paragraph shall be construed to limit EPA's authority to  
16 require performance of further response actions at the Site.

17 35. In the event of unanticipated or changed circumstances at the Site, Respondent  
18 shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of the  
19 unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event  
20 that EPA determines that the immediate threat or the unanticipated or changed circumstances  
21 warrant changes in the work plan, EPA shall modify or amend the work plan in writing  
22 accordingly. Respondent shall perform the work plan as modified or amended.

## 23 24 **XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

25 36. After review of any plan, report or other item that is required to be submitted for  
26 approval pursuant to this Settlement Agreement, EPA shall: (a) approve, in whole or in part, the  
27 submission; (b) approve the submission upon specified conditions; (c) modify the submission to  
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2 cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that  
3 Respondent modify the submission; or (e) any combination of the above. However, EPA shall  
4 not modify a submission without first providing Respondent at least one notice of deficiency and  
5 an opportunity to cure within 21 days, except where to do so would cause serious disruption to  
6 the Work or where previous submission(s) have been disapproved due to material defects and the  
7 deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an  
8 acceptable deliverable.

9       37. In the event of approval, approval upon conditions, or modification by EPA,  
10 Respondent shall proceed to take any action required by the plan, report or other item, as  
11 approved or modified by EPA subject only to its right to invoke the Dispute Resolution  
12 procedures set forth in Section XVIII (Dispute Resolution) with respect to the modifications or  
13 conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies  
14 and the submission has a material defect, EPA retains the right to seek stipulated penalties, as  
15 provided in Section XIX (Stipulated Penalties). EPA also retains the right to perform its own  
16 studies, complete the Focused RI/FS (or any portion thereof) under CERCLA and the NCP, and  
17 seek reimbursement from Respondent for its costs; and/or seek any other appropriate relief.

18       38. Resubmission of Plans.

19       a. Upon receipt of a notice of disapproval, Respondent shall, within 21 days or such  
20 longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan,  
21 report, or other item for approval.

22       b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed, at  
23 the direction of EPA, to take any action required by any non-deficient portion of the submission.  
24 Implementation of any non-deficient portion of a submission shall not relieve Respondent of any  
25 liability for stipulated penalties under Section XIX (Stipulated Penalties).

26       c. In the event that a resubmitted plan, report or other item, or portion thereof, is  
27 disapproved by EPA, EPA may again require Respondent to correct the deficiencies, in  
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2 accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the  
3 plan, report or other item. Respondent shall implement any such plan, report, or item as  
4 modified or developed by EPA, subject only to its right to invoke the procedures set forth in  
5 Section XVIII (Dispute Resolution).

6 d. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to  
7 a material defect, Respondent shall be deemed to have failed to submit such plan, report, or item  
8 timely and adequately unless Respondent invokes the dispute resolution procedures set forth in  
9 Section XVIII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The  
10 provisions of Section XVIII (Dispute Resolution) and Section XIX (Stipulated Penalties) shall  
11 govern the implementation of the Work and accrual and payment of any stipulated penalties  
12 during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties  
13 shall accrue for such violation from the date on which the initial submission was originally  
14 required, as provided in Section XIX (Stipulated Penalties).

15 39. In the event that EPA takes over some of the tasks, but not the preparation of the  
16 Focused RI/FS, Respondent shall incorporate and integrate information supplied by EPA into the  
17 final Focused Remedial Investigation and Focused Feasibility Study Reports.

18 40. All plans, reports, and other items required to be submitted to EPA under this  
19 Settlement Agreement shall, upon approval or modification by EPA, be enforceable under this  
20 Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or  
21 other item required to be submitted to EPA under this Settlement Agreement, the approved or  
22 modified portion shall be enforceable under this Settlement Agreement.

## 23 24 **XII. QUALITY ASSURANCE**

25 41. Respondent shall assure that Work performed, samples taken and analyses  
26 conducted conform to the requirements of the SOW, the QAPP and guidances identified therein.  
27 Respondent will assure that field personnel used by Respondent are properly trained in the use of  
28

1  
2 field equipment and in chain of custody procedures. Respondent shall only use laboratories that  
3 have a documented quality system that complies with "EPA Requirements for Quality  
4 Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as  
5 determined by EPA.  
6

### 7 **XIII. PROGRESS REPORTS AND MEETINGS**

8 42. Respondent shall make presentations at, and participate in, meetings at the request  
9 of EPA during the initiation, conduct, and completion of the Focused RI/FS.

10 43. Respondent shall provide to EPA monthly progress reports. After Respondent  
11 provides Notification of Initiation of Fieldwork as required by SOW Section 4.1, and continuing  
12 until Respondent provides Notification of Completion of Fieldwork as required by SOW Section  
13 4.1, Respondent shall provide to EPA weekly progress reports. At a minimum, with respect to  
14 the preceding month and week, these progress reports shall (1) describe the actions which have  
15 been taken to comply with this Settlement Agreement during that month or week (2) include all  
16 results of sampling and tests and all other data received by the Respondent, (3) describe work  
17 planned for the next two months or two weeks with schedules relating such work to the overall  
18 project schedule for Focused RI/FS completion and (4) describe all problems encountered and  
19 any anticipated problems, any actual or anticipated delays, and solutions developed and  
20 implemented to address any actual or anticipated problems or delays. Respondent may submit  
21 weekly and monthly progress reports electronically and may combine the monthly report with  
22 the last weekly report submitted during a month.  
23

### 24 **XIV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY**

25 44. All results of sampling, tests, modeling or other data (including raw data) generated  
26 by Respondent, or on Respondent's behalf, during implementation of this Settlement Agreement,  
27 shall be submitted to EPA in the subsequent progress report as described in Section XIII of this  
28

1  
2 Settlement Agreement (Progress Reports and Meetings).

3 45. Respondent will notify EPA in writing at least 14 days prior to conducting  
4 significant field events as described in the Statement of Work, Focused Remedial Investigation  
5 Work Plan or Sampling and Analysis Plan. At EPA's verbal or written request, or the request of  
6 EPA's oversight assistant, Respondent shall allow split or duplicate samples to be taken by EPA  
7 (and its authorized representatives) of any samples collected by the Respondent in implementing  
8 this Settlement Agreement. All split samples of Respondent shall be analyzed by the methods  
9 identified in the QAPP.

10 46. At all reasonable times, EPA and its authorized representatives shall have the  
11 authority to enter and freely move about all property at the Site and off-site areas where work, if  
12 any, is being performed, for the purposes of inspecting conditions, activities, the results of  
13 activities, records, operating logs, and contracts related to the Site or Respondent and its  
14 contractor pursuant to this Settlement Agreement; reviewing the progress of the Respondent in  
15 carrying out the terms of this Settlement Agreement; conducting tests as EPA or its authorized  
16 representatives deem necessary; using a camera, sound recording device or other documentary  
17 type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent  
18 shall allow these persons to inspect and copy all records, files, photographs, documents, sampling  
19 and monitoring data, and other writings related to work undertaken in carrying out this  
20 Settlement Agreement. Nothing herein shall be interpreted as limiting or affecting EPA's right of  
21 entry or inspection authority under federal law. All parties with access to the Site under this  
22 paragraph shall comply with all approved health and safety plans.

23 47. The Respondent may assert a claim of business confidentiality covering part or all  
24 of the information submitted to EPA pursuant to the terms of this Settlement Agreement under  
25 40 C.F.R. Section 2.203, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42  
26 U.S.C. Section 9604 (e)(7). This claim shall be asserted in the manner described by 40 C.F.R.  
27 Section 2.203(b) and substantiated at the time the claim is made. Information determined to be  
28

1  
2 confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such  
3 claim accompanies the information when it is submitted to EPA, it may be made available to the  
4 public by EPA or the state without further notice to the Respondent. Respondent agrees not to  
5 assert confidentiality claims with respect to any documents, reports or other information created  
6 or generated pursuant to the requirements of this Settlement Agreement or to make any claim of  
7 confidentiality with respect to any data, including, but not limited to, all sampling, analytical,  
8 monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or  
9 information evidencing conditions at or around the Site.

10 48. In entering into this Settlement Agreement, Respondent waives any objections to  
11 any data gathered, generated, or evaluated by EPA, the Arizona Department of Environmental  
12 Quality or Respondent in the performance or oversight of the work that has been verified  
13 according to the quality assurance/quality control (QA/QC) procedures required by the  
14 Settlement Agreement or any EPA-approved work plans or sampling and analysis plans. If  
15 Respondent objects to any other data relating to the Focused RI/FS, Respondent shall submit to  
16 EPA a report that identifies and explains its objections, describes the acceptable uses of the data,  
17 if any, and identifies any limitations to the use of the data. The report must be submitted to EPA  
18 within 15 days of the progress report containing the data.

19 49. If the Site, or the off-site area that is to be used for access or is within the scope of  
20 the Focused RI/FS, is owned in whole or in part by parties other than those bound by this  
21 Settlement Agreement, Respondent will obtain, or use its best efforts to obtain, Site access  
22 agreements from the present owner(s) within thirty (30) days of the effective date of this  
23 Settlement Agreement. Such agreements shall provide access for EPA, its contractors and  
24 oversight officials, the state and its contractors, and the Respondent or its authorized  
25 representatives, and such agreements shall specify that Respondent is not EPA's representative  
26 with respect to liability associated with Site activities. Copies of such agreements shall be  
27 provided to EPA prior to Respondent's initiation of field activities. Respondent's best efforts  
28

1  
2 shall include providing reasonable compensation to any off-site property owner. If access  
3 agreements are not obtained within the time referenced above, Respondent shall immediately  
4 notify EPA of its failure to obtain access. EPA may obtain access for the Respondent, perform  
5 those tasks or activities with EPA contractors, or terminate the Settlement Agreement in the  
6 event that Respondent cannot obtain access agreements. In the event that EPA performs those  
7 tasks or activities with EPA contractors and does not terminate the Settlement Agreement,  
8 Respondent shall perform all other activities not requiring access to that Site, and shall reimburse  
9 EPA for all costs incurred in performing such activities. Respondent additionally shall integrate  
10 the results of any such tasks undertaken by EPA into its reports and deliverables. Respondent  
11 also shall reimburse EPA for all costs and attorney fees incurred by the United States to obtain  
12 access for the Respondent in the manner described in Section XXI (Payment of Response Costs).  
13

#### 14 **XV. DESIGNATED PROJECT COORDINATORS**

15 50. Documents including reports, approvals, disapprovals, and other correspondence  
16 that must be submitted under this Settlement Agreement, shall be sent by certified mail, return  
17 receipt requested, to the following addressees or to any other addressees which the Respondent  
18 and EPA designate in writing:

19 (a) Respondent will send copies of all documents to be submitted to EPA to EPA's  
20 Project Coordinator as identified below:

21 2 hard copies and 1 electronic copy to:

22 Nadia Hollan  
23 Remedial Project Manager  
24 Superfund Division (SFD-8-2)  
25 US EPA, Region IX  
26 75 Hawthorne Street  
27 San Francisco, CA 94105  
28 Hollan.Nadia@epa.gov

Respondent will also send copies of all documents submitted to EPA to:

1 hard copy, 3 electronic copies

1  
2 Kris Paschall  
3 Arizona Department of Environmental Quality  
4 1110 W. Washington St.  
5 Phoenix, AZ 85007-2935  
6 paschall.kris@azdeq.gov

7 1 electronic copy

8 Wayne Schiemann  
9 US Army Corps of Engineers  
10 wayne.a.schiemann@spl01.usace.army.mil

11 1 hard copy, 1 electronic copy

12 Sue Kraemer  
13 Shaw E&I  
14 1326 N. Market Street  
15 Sacramento, CA 95834-1912  
16 sue.kraemer@shawgrp.com

17 (b) Documents to be submitted to the Respondent should be sent to Respondent's  
18 Project Coordinator as follows:

19 [Name, Title,  
20 Organization,  
21 Street, City, State, Zip Code].

22 51. Each Project Coordinator shall be responsible for overseeing the implementation of  
23 this Settlement Agreement. To the maximum extent possible, communications between the  
24 Respondent and EPA shall be directed to the Project Coordinator by mail, with copies to such  
25 other persons as EPA and Respondent may respectively designate. Communications include, but  
26 are not limited to, all documents, reports, approvals, and other correspondence submitted under  
27 this Settlement Agreement.

28 52. EPA and the Respondent each have the right to change their respective Project  
Coordinator. EPA and Respondent also have the right to change the number of copies of  
documents required pursuant to this Settlement Agreement. The other party must be notified in  
writing at least 10 days prior to the change.

53. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial  
Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's

1  
2 Project Coordinator shall have the authority consistent with the National Contingency Plan, to  
3 halt any work required by this Settlement Agreement, and to take any necessary response action  
4 when s/he determines that conditions at the Site may present an immediate endangerment to  
5 public health or welfare or the environment. The absence of the EPA Project Coordinator from  
6 the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or  
7 delay of work.  
8

#### 9 **XVI. COMPLIANCE WITH OTHER LAWS**

10 54. Respondent shall comply with all local, state and federal laws that are applicable  
11 when performing the Focused RI/FS. No local, state, or federal permit shall be required for any  
12 portion of any action conducted entirely on-site, including studies, where such action is selected  
13 and carried out in compliance with Section 121 of CERCLA and the applicable portions of the  
14 National Contingency Plan ("NCP"). Where any portion of the Work is to be conducted off-site  
15 and requires a federal or state permit or approval, Respondents shall submit timely and complete  
16 applications and take all other actions necessary to obtain and to comply with all such permits or  
17 approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued  
18 pursuant to any federal or state statute or regulation.  
19

#### 20 **XVII. RETENTION OF RECORDS**

21 55. All records and documents in Respondent's possession that relate in any way to the  
22 Site shall be preserved during the conduct of this Settlement Agreement and for a minimum of 10  
23 years after commencement of construction of any remedial action. The Respondent shall acquire  
24 and retain copies of all documents that relate to the Site and are in the possession of its  
25 employees, agents, accountants, contractors, or attorneys. After this 10 year period, the  
26 Respondent shall notify EPA at least 90 days before the documents are scheduled to be  
27 destroyed. If EPA requests that the documents be saved, the Respondent shall, at no cost to EPA,  
28

1  
2 give EPA the documents or copies of the documents.

3       56. Respondent hereby certifies that to the best of its knowledge and belief, after  
4 thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any  
5 records, documents or other information (other than exactly identical copies) relating to its  
6 potential liability regarding the Site or the Motorola 52<sup>nd</sup> Street Site since notification of potential  
7 liability by EPA and it has fully complied with any and all EPA requests for information  
8 pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and  
9 Section 3007 of RCRA, 42 U.S.C. § 6927.

#### 10 11                                   **XVIII. DISPUTE RESOLUTION**

12       57. Unless otherwise expressly provided for in this Settlement Agreement, the dispute  
13 resolution procedures of this Section shall be the exclusive mechanism for resolving disputes  
14 arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements  
15 concerning this Settlement Agreement expeditiously and informally.

16       58. If Respondent objects to any EPA action taken pursuant to this Settlement  
17 Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its  
18 objection(s) within five (5) days of such action, unless the objection(s) has/have been resolved  
19 informally. EPA and Respondent shall have ninety (90) days from EPA's receipt of  
20 Respondent's written objection(s) to resolve the dispute through formal negotiations (the  
21 "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

22       59. Any agreement reached by the Parties pursuant to this Section shall be in writing and  
23 shall, upon signature by the Parties, be incorporated into and become an enforceable part of this  
24 Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation  
25 Period, an EPA management official at the Branch Chief level or higher will issue a written  
26 decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an  
27 enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement  
28



1  
2 Agreement shall not be tolled by submission of any objection for dispute resolution under this  
3 Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill  
4 the requirement that was the subject of the dispute in accordance with the agreement reached or  
5 with EPA's decision, whichever occurs.  
6

#### 7 **XIX. STIPULATED PENALTIES**

8 60. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in  
9 this Section for failure to comply with the requirements of this Settlement Agreement specified  
10 below unless excused under Section XX (Force Majeure). "Compliance" by Respondent shall  
11 include completion of the activities under this Settlement Agreement, Focused RI/FS Work Plan  
12 or other plan approved under this Settlement Agreement identified below in accordance with all  
13 applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other  
14 documents approved by EPA pursuant to this Settlement Agreement and within the specified  
15 time schedules established by and approved under this Settlement Agreement.

#### 16 **61. Stipulated Penalty Amounts - Major Deliverables**

17 a. The following stipulated penalties shall accrue per day for any noncompliance  
18 identified in Subparagraph 61(b):  
19

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 7,000	1 <sup>st</sup> through 7 <sup>th</sup> day
\$ 14,000	8 <sup>th</sup> through 30 <sup>th</sup> day
\$ 27,500	31 <sup>st</sup> day and beyond

b. Compliance Milestones

1. Draft and Final Focused RI/FS Work Plan (SOW Section 3.3.1)
2. Compliance with the Schedule contained in the Final Focused RI/FS Work Plan
3. Technical Memorandums to supplement Focused RI/FS Work Plan (SOW Section 3.3.1)
4. Draft and Final Sampling and Analysis Plan (SOW Section 3.3.2)
5. Draft and Final Site Health and Safety Plan (SOW Section 3.3.3)
6. Notification of Initiation of Field Work (SOW Section 4.1)
7. Notification of Completion of Field Work (SOW Section 4.1)
8. Draft and Final Focused Remedial Investigation Report (SOW Section 4.3)
9. Draft and Final Focused Feasibility Study Report (SOW Section 5.3)

62. Stipulated Penalty Amounts - Other Reporting.

a. The following stipulated penalties shall accrue per day for any noncompliance identified in Subparagraph 62(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1000.00	1 <sup>st</sup> through 7 <sup>th</sup> day
\$ 2000.00	8 <sup>th</sup> through 30 <sup>th</sup> day
\$ 4,000.00	31 <sup>st</sup> day and beyond

b. Compliance Milestones

The compliance milestones for this subsection are as follows:

1. Monthly Progress Reports (SOW Section 2.0 )

1  
2                   2.       Weekly Progress Reports (SOW Section 4.1)

3           63. For any failure to perform any other work required by this Settlement Agreement,  
4 stipulated penalties shall accrue in the amount of \$2,500 per day, per violation, for the first seven  
5 days of noncompliance, \$5,000 per day, per violation, for days 8 through 30 of noncompliance,  
6 and in the amount of \$10,000 per day, per violation, thereafter. In the event that EPA assumes  
7 performance of a portion or all of the Work pursuant to Paragraph 81 of Section XXIII  
8 (Reservation of Rights by EPA), Respondent shall be liable for a stipulated penalty in the amount  
9 of five hundred thousand dollars (\$500,000).

10          64. All penalties shall begin to accrue on the day after the complete performance is due  
11 or the day a violation occurs, and shall continue to accrue through the final day of the correction  
12 of the noncompliance or completion of the activity. However, stipulated penalties shall not  
13 accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and  
14 Other Submissions), during the period, if any, beginning on the 31<sup>st</sup> day after EPA's receipt of  
15 such submission until the date that EPA notifies Respondent of any deficiency; and (2) with  
16 respect to a decision by the EPA Management Official at the Branch Chief level or higher, under  
17 Section XVIII (Dispute Resolution), during the period, if any, beginning on the 21<sup>st</sup> day after the  
18 Negotiation Period begins until the date that the EPA management official issues a final decision  
19 regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate  
20 penalties for separate violations of this Settlement Agreement.

21          65. Following EPA's determination that Respondent has failed to comply with a  
22 requirement of this Settlement Agreement, EPA may give Respondent written notification of the  
23 same and describe the noncompliance. EPA may send Respondent a written demand for the  
24 payment of the penalties. However, penalties shall accrue as provided in the preceding  
25 Paragraph regardless of whether EPA has notified Respondent of a violation.

26          66. All penalties accruing under this Section shall be due and payable to EPA within 30  
27 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless  
28

1  
2 Respondent invokes the dispute resolution procedures under Section XVIII (Dispute Resolution).  
3 All payments to EPA under this Section shall be paid by certified or cashier's check(s) made  
4 payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA - Region 9  
5 ATTN: Superfund Accounting, P.O. Box 360863M, Pittsburgh, PA 15251, shall indicate that  
6 the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID  
7 Number 09BE, the EPA Docket Number, and the name and address of the party(ies) making  
8 payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal  
9 letter(s) shall be sent to EPA's Project Coordinator.

10 67. The payment of penalties shall not alter in any way Respondent's obligation to  
11 complete performance of the Work required under this Settlement Agreement.

12 68. Penalties shall continue to accrue during any dispute resolution period, but need not  
13 be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

14 69. If Respondent fails to pay stipulated penalties when due, EPA may institute  
15 proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the  
16 unpaid balance, which shall begin to accrue on the date of EPA's demand.

17 70. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or  
18 in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue  
19 of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon  
20 which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA,  
21 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C.  
22 § 9607(c)(3). Notwithstanding any other provision of this Section, EPA may, in its  
23 unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to  
24 this Settlement Agreement.

## 25 26 **XX. FORCE MAJEURE**

27 71. Respondent agrees to perform all requirements of this Settlement Agreement  
28

1  
2 within the time limits established under this Settlement Agreement , unless the performance is  
3 delayed by a *force majeure*. For purposes of this Settlement Agreement , *force majeure* is defined  
4 as any event arising from causes beyond the control of Respondent or of any entity controlled by  
5 Respondent, including but not limited to its contractors and subcontractors, which delays or  
6 prevents performance of any obligation under this Settlement Agreement despite Respondent's  
7 best efforts to fulfill the obligation. *Force majeure* does not include financial inability to  
8 complete the Work or increased cost of performance.

9       72. If any event occurs or has occurred that may delay the performance of any  
10 obligation under this Settlement Agreement, whether or not caused by a force majeure event,  
11 Respondent shall notify by telephone the Project Coordinator or, in his or her absence, EPA's  
12 Chief, Private Sites Section, Federal Facilities and Site Cleanup Branch of the Superfund  
13 ("Section Chief"), within 48 hours of when the Respondent knew or should have known that the  
14 event might cause a delay. Within five business days thereafter, Respondent shall provide in  
15 writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be  
16 taken to prevent or minimize the delay; a schedule for implementation of any measures to be  
17 taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of  
18 Respondent, such event may cause or contribute to an endangerment to public health, welfare or  
19 the environment. Respondent shall exercise best efforts to avoid or minimize any delay and any  
20 effects of a delay. Failure to comply with the above requirements shall preclude Respondent  
21 from asserting any claim of force majeure.

22       73. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure*  
23 event, the time for performance of the obligations under this Order that are affected by the *force*  
24 *majeure* event will be extended by EPA for such time as is necessary to complete those  
25 obligations. An extension of the time for performance of the obligations affected by the *force*  
26 *majeure* event shall not, of itself, extend the time for performance of any other obligation. If  
27 EPA does not agree that the delay or anticipated delay has been or will be caused by a *force*  
28

1  
2 *majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the  
3 delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the  
4 length of the extension, if any, for performance of the obligations affected by the *force majeure*  
5 event.

## 6 7 **XXI. PAYMENT OF RESPONSE COSTS**

### 8 **74. Payment for Past Response Costs**

9 a. EPA will send Respondent a bill requiring payment of all costs incurred  
10 through June 30, 2004. The bill will include, but is not limited to EPA's certified Agency  
11 Financial Management System summary data (SCORES Reports), or such other summary as  
12 certified by EPA . Within thirty (30) days after receipt of this bill, Respondent shall pay the sum  
13 of this bill to EPA for EPA's Past Response Costs. Payment shall be made to EPA by certified  
14 or cashiers check made payable to "EPA Hazardous Substance Superfund." Each check, or letter  
15 accompanying each check, shall identify the name and address of the party making payment, the  
16 Site name as well as the name of the Motorola 52<sup>nd</sup> Street Site, the EPA Region (Region 9) and  
17 Site/Spill ID Number 09BE, and the EPA docket number for this action. Payment shall be sent  
18 to:

19 U.S. EPA - Region 9  
20 ATTN: Superfund Accounting  
21 P.O. Box 360863M  
Pittsburgh, PA 15251

22 b. At the time of payment, Respondent shall send notice that payment has been  
23 made to the EPA Project Coordinator.

24 c. The total amount to be paid by Respondent pursuant to Subparagraph 74a shall  
25 be deposited in the Motorola 52<sup>nd</sup> Street Superfund Site Special Account within the EPA  
26 Hazardous Substance Superfund to be retained and used to conduct or finance response actions at  
27 or in connection with the Motorola 52<sup>nd</sup> Street Site, or to be transferred by EPA to the EPA  
28

1  
2 Hazardous Substance Superfund.

3 75. Payment for Future Response Costs.

4 a. Respondent shall pay EPA all Future Response Costs not inconsistent with the  
5 NCP. On a periodic basis, EPA will send Respondent a bill requiring payment, including, but  
6 not limited to EPA's certified Agency Financial Management System summary data (SCORES  
7 Reports), or such other summary as certified by EPA. Respondent shall make all payments within  
8 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 77  
9 of this Settlement Agreement. Respondent shall make all payments required by this Paragraph by  
10 a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund,"  
11 referencing the name and address of the party making payment, the Site name and the name of  
12 the Motorola 52<sup>nd</sup> Street Superfund Site, the EPA Region (Region 9), Site/Spill ID Number  
13 09BE, and the EPA docket number for this action. Respondent shall send the check(s) to:

14 U.S. EPA - Region 9  
15 ATTN: Superfund Accounting  
16 P.O. Box 360863M  
Pittsburgh, PA 15251

17 Alternatively, Respondent may make payments required by this Paragraph by Electronic  
18 Funds Transfer ("EFT") in accordance with EFT procedures to be provided to Respondent by  
19 EPA Region 9, and shall be accompanied by a statement identifying the name and address of the  
20 party making payment, the Site name and the name of the Motorola 52<sup>nd</sup> Street Superfund Site,  
21 the EPA Region (Region 9), Site/Spill ID Number 09BE, and the EPA docket number for this  
22 action.

23 b. At the time of payment, Respondent shall send notice that payment has been  
24 made to the EPA Project Coordinator.

25 c. The total amount to be paid by Respondent pursuant to Subparagraph 75a shall  
26 be deposited in the Motorola 52<sup>nd</sup> Street Superfund Site Special Account within the EPA  
27 Hazardous Substance Superfund to be retained and used to conduct or finance response actions at  
28

1  
2 or in connection with the Motorola 52<sup>nd</sup> Street Site, or to be transferred by EPA to the EPA  
3 Hazardous Substance Superfund.

4       76. In the event that the payments for Past Response Costs or Future Response Costs are  
5 not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the  
6 unpaid balance. The Interest on Past Response Costs and Future Response Costs shall begin to  
7 accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of  
8 Interest made under this Paragraph shall be in addition to such other remedies or sanctions  
9 available to the United States by virtue of Respondent's failure to make timely payments under  
10 this Section, including but not limited to, payments of stipulated penalties pursuant to Section  
11 XIX (Stipulated Penalties). Respondent shall make all payments required by this Paragraph in  
12 the manner described in Paragraph 75.

13       77. Respondent may contest payment of the Past Response Costs or any Future  
14 Response Costs if it determines that EPA has made an accounting error or if it believes EPA  
15 incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP.  
16 Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to  
17 the EPA Project Coordinator. Any such objection shall specifically identify the contested cost(s)  
18 and the basis for objection. In the event of an objection, Respondent shall within the 30 day  
19 period pay all uncontested Past Response Costs or Future Response Costs to EPA in the manner  
20 described in Paragraph 75. Simultaneously, Respondent shall establish an interest-bearing  
21 escrow account in a federally-insured bank duly chartered in the State of Arizona and remit to  
22 that escrow account funds equivalent to the amount of the contested Past Response Costs or  
23 Future Response Costs. Respondent shall send to the EPA Project Coordinator a copy of the  
24 transmittal letter and check paying the uncontested Past Response Costs or Future Response  
25 Costs, and a copy of the correspondence that establishes and funds the escrow account, including,  
26 but not limited to, information containing the identity of the bank and bank account under which  
27 the escrow account is established as well as a bank statement showing the initial balance of the  
28



1  
2 escrow account. Simultaneously with establishment of the escrow account, Respondent shall  
3 initiate the Dispute Resolution procedures in Section XVIII (Dispute Resolution). If EPA  
4 prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the  
5 sums due (with accrued interest) to EPA in the manner described in Paragraph 75. If Respondent  
6 prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the  
7 costs (plus associated accrued interest) for which it did not prevail to EPA in the manner  
8 described in Paragraph 75. Respondent shall be disbursed any balance of the escrow account.  
9 The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures  
10 set forth in Section XVIII (Dispute Resolution) shall be the exclusive mechanisms for resolving  
11 disputes regarding Respondent's obligation to reimburse EPA for its Past Response Costs and  
12 Future Response Costs.

## 13 14 **XXII. EPA COVENANT**

15 78. In consideration of the actions that will be performed and the payments that will be  
16 made by Respondent under the terms of this Settlement Agreement, and except as otherwise  
17 specifically provided in this Settlement Agreement, EPA covenants not to sue or take  
18 administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42  
19 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Past Response  
20 Costs and Future Response Costs. This covenant shall take effect upon receipt by EPA of the  
21 Past Response Costs due under Section XXI (Payment of Response Costs) of this Settlement  
22 Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as  
23 required by Sections XXI (Payment of Response Costs) and XIX (Stipulated Penalties). This  
24 covenant is conditioned upon the complete and satisfactory performance by Respondent of all  
25 obligations under this Settlement Agreement, including, but not limited to, payment of Future  
26 Response Costs pursuant to Section XXI (Payment of Response Costs). This covenant extends  
27 only to Respondent and does not extend to any other person.  
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3 **XXIII. RESERVATIONS OF RIGHTS**

4 79. Except as specifically provided in this Settlement Agreement, nothing herein shall  
5 limit the power and authority of EPA or the United States to take, direct, or order all actions  
6 necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize  
7 an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous  
8 or solid waste on, at , or from the Site or the Motorola 52<sup>nd</sup> Street Site. Further, nothing herein  
9 shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement  
10 Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or  
11 from requiring Respondent in the future to perform additional activities pursuant to CERCLA or  
12 any other applicable law.

13 80. The covenant not to sue set forth in Section XXII (EPA Covenant) above does not  
14 pertain to any matters other than those expressly identified therein. EPA reserves, and this  
15 Settlement Agreement is without prejudice to, all rights against Respondent with respect to all  
16 other matters, including, but not limited to:

- 17 a. claims based on a failure by Respondent to meet a requirement of this  
18 Settlement Agreement;  
19 b. liability for costs not included within the definition of Past Response  
20 Costs and Future Response Costs;  
21 c. liability for performance of response action other than the Work;  
22 d. criminal liability;  
23 e. liability for damages for injury to, destruction of, or loss of natural  
24 resources, and for the costs of any natural resource damage assessments;  
25 f. liability arising from the past, present, or future disposal, release or  
26 threat of release of Waste Materials outside of the Site; and  
27 g. liability for costs incurred or to be incurred by the Agency for Toxic  
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2 Substances and Disease Registry related to the Site that are not paid by Respondent as Past  
3 Response Costs or Future Response Costs.

4 81. Work Takeover. In the event EPA determines that Respondent has ceased  
5 implementation of any portion of the Work, is seriously or repeatedly deficient or late in its  
6 performance of the Work, or is implementing the Work in a manner that may cause an  
7 endangerment to human health or the environment, EPA may assume the performance of all or  
8 any portion of the Work as EPA determines necessary. Respondent may invoke the procedures  
9 set forth in Section XVIII (Dispute Resolution) to dispute EPA's determination that takeover of  
10 the Work is warranted under this Paragraph. Costs incurred by EPA in performing the Work  
11 pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay  
12 pursuant to Section XXI (Payment of Response Costs). Notwithstanding any other provision of  
13 this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all  
14 response actions authorized by law.

#### 15 16 **XXIV. RESPONDENT'S COVENANT**

17 82. Respondent covenants not to sue and agrees not to assert any claims or causes of  
18 action against the United States, or its contractors or employees, with respect to the Work, Past  
19 Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited  
20 to:

21 a. any direct or indirect claim for reimbursement from the Hazardous Substance  
22 Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113  
23 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

24 b. any claim arising out of the Work or arising out of the response actions for  
25 which the Past Response Costs or Future Response Costs have or will be incurred, including any  
26 claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access  
27 to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or  
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2 c. any claim against the United States pursuant to Sections 107 and 113 of  
3 CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

4 83. Nothing in this Agreement shall be deemed to constitute approval or  
5 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or  
6 40 C.F.R. § 300.700(d).

7 84. By signing this Settlement Agreement and taking actions under this Settlement  
8 Agreement, the Respondent does not necessarily agree with EPA's Findings of Fact and  
9 Conclusions of Law. Furthermore, the participation of the Respondent in this Settlement  
10 Agreement shall not be considered an admission of liability and is not admissible in evidence  
11 against the Respondent in any judicial or administrative proceeding other than a proceeding by the  
12 United States, including EPA, to enforce this Settlement Agreement or a judgment relating to it.  
13 Respondent retains its rights to assert claims against other potentially responsible parties at the  
14 Site. However, the Respondent agrees not to contest the validity or terms of this Settlement  
15 Agreement, or the procedures underlying or relating to it in any action brought by the  
16 United States, including EPA, to enforce its terms.

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18 **XXV. OTHER CLAIMS**

19 85. By issuance of this Settlement Agreement, the United States or EPA assumes no  
20 liability for injuries or damages to persons or property resulting from any acts or omissions of  
21 Respondent. The United States or EPA shall not be deemed a party to any contract entered into  
22 by Respondent or its directors, officers, employees, agents, successors, representatives, assigns,  
23 contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

24 86. Except as expressly provided in Section XXIII (Reservation of Rights) and Section  
25 XXII (EPA Covenant), nothing in this Settlement Agreement constitutes a satisfaction of or  
26 release from any claim or cause of action against Respondent or any person not a party to this  
27 Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or  
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2 common law, including but not limited to any claims of the United States for costs, damages and  
3 interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

4 87. No action or decision by EPA pursuant to this Settlement Agreement shall give rise  
5 to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. §  
6 9613(h).

## 7 8 **XXVI. CONTRIBUTION**

9 88.

10 a. The Parties agree that this Settlement Agreement constitutes an administrative  
11 settlement for the purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that  
12 Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims  
13 as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and  
14 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in  
15 this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs.  
16 Nothing in this Settlement Agreement precludes the United States or Respondent from asserting  
17 any claims, causes of action, or demands against any person not a party to this Settlement  
18 Agreement for indemnification, contribution, or cost recovery.

19  
20 b. The Parties agree that this Settlement Agreement constitutes an administrative  
21 settlement for the purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B),  
22 pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United  
23 States for the Work, Past Response Costs and Future response Costs.

## 24 25 **XXVII. INDEMNIFICATION**

26 89. Respondent shall indemnify, save and hold harmless the United States, its officials,  
27 agents, contractors, subcontractors, employees and representatives from any and all claims or  
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causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

90. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site.

## XXVIII. INSURANCE

91. At least fifteen (15) days prior to Notification of Fieldwork as required by Section 4.1 of the SOW, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit, naming the United States as an additional insured. Within the same period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies

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2 each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement  
3 Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy,  
4 all applicable laws and regulations regarding the provision of worker's compensation insurance  
5 for all persons performing the Work on behalf of Respondent in furtherance of this Settlement  
6 Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or  
7 subcontractor maintains insurance equivalent to that described above, or insurance covering some  
8 or all of the same risks but in an equal or lesser amount, then Respondent need provide only that  
9 portion of the insurance described above which is not maintained by such contractor or  
10 subcontractor.

## 11 12 **XXIX. FINANCIAL ASSURANCE**

13 92. Prior to Notification of Fieldwork as required by Section 4.1 of the SOW, Respondent  
14 shall establish and maintain financial security for the benefit of EPA in the amount required to  
15 fully and adequately complete the Work in one or more of the following forms:

16 a. a surety bond unconditionally guaranteeing payment and/or performance of the  
17 Work;

18 b. one or more irrevocable letters of credit, payable to, or at the direction of EPA,  
19 issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost  
20 of the Work;

21 c. a trust fund administered by a trustee acceptable in all respects to EPA;

22 d. a policy of insurance issued by an insurance carrier acceptable in all respects to  
23 EPA, which ensures the payment and/or performance of the Work;

24 e. a corporate guarantee to perform the Work provided by one or more parent  
25 corporations or subsidiaries of Respondent, or by one or more unrelated corporations that have a  
26 substantial business relationship with Respondent; including a demonstration that any such  
27 company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or  
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2 f. a corporate guarantee to perform the Work by Respondent, including a  
3 demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

4 93. Any and all financial assurance instruments provided pursuant to this Section shall be  
5 in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that  
6 EPA determines at any time that the financial assurances provided pursuant to this Section  
7 (including, without limitation, the instrument(s) evidencing such assurances) are inadequate,  
8 Respondent shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and  
9 present to EPA for approval one of the other forms of financial assurance listed in Paragraph 92,  
10 above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing  
11 the Work has increased, then, within thirty (30) days of such notification, Respondent shall obtain  
12 and present to EPA for approval a revised form of financial assurance (otherwise acceptable under  
13 this Section) that reflects such cost increase. Respondent's inability to demonstrate financial  
14 ability to complete the Work shall in no way excuse performance of any activities required under  
15 this Settlement Agreement.

16 94. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to  
17 Subparagraph 92e or 92f of this Settlement Agreement, Respondent shall (i) demonstrate to  
18 EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and  
19 (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f)  
20 annually, on the anniversary of the Effective Date, to EPA. For the purposes of this Settlement  
21 Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-  
22 closure costs estimates and the current plugging and abandonment costs estimates," the cost  
23 estimate for the Work as identified in the Focused RI/FS Workplan (section 3.3.1 of the SOW)  
24 shall be used in relevant financial test calculations.

25 95. If, after the Effective Date, Respondent can show that the estimated cost to complete  
26 the remaining Work has diminished, Respondent may, on any anniversary date of the Effective  
27 Date, or at any other time agreed to by the Parties, reduce the amount of the financial security  
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2 provided under this Section to the estimated cost of the remaining Work to be performed.  
3 Respondent shall submit a proposal for such reduction to EPA, in accordance with the  
4 requirements of this Section, and may reduce the amount of the security after receiving written  
5 approval from EPA. In the event of a dispute, Respondent may reduce the amount of security in  
6 accordance with the written decision resolving the dispute.

7 96. Respondent may change the form of financial assurance provided under this Section at  
8 any time, upon notice to and prior written approval by EPA, provided that EPA determines that  
9 the new form of assurance meets the requirements of this Section. In the event of a dispute,  
10 Respondent may change the form of the financial assurance only in accordance with the written  
11 decision resolving the dispute.

### 12 13 **XXX. SEVERABILITY/INTEGRATION/APPENDICES**

14 97. If a court issues an order that invalidates any provision of this Settlement Agreement  
15 or finds that Respondent has sufficient cause not to comply with one or more provisions of this  
16 Settlement Agreement, Respondent shall remain bound to comply with all provisions of this  
17 Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by  
18 the court's order.

19 98. This Settlement Agreement and its appendices constitute the final, complete and  
20 exclusive agreement and understanding among the Parties with respect to the settlement embodied  
21 in this Settlement Agreement. The parties acknowledge that there are no representations,  
22 agreements or understandings relating to the settlement other than those expressly contained in  
23 this Settlement Agreement. The following Appendices are attached to and incorporated into this  
24 Settlement Agreement:

25 "Appendix A" is the SOW.

26 "Appendix B" is the map of the Motorola 52<sup>nd</sup> Street Site  
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2 **XXXI. SUBSEQUENT MODIFICATION**

3 99. The EPA Project Coordinator may make modifications to any plan or schedule or  
4 Statement of Work in writing or by oral direction. Any oral modification will be memorialized in  
5 writing by EPA promptly, but shall have as its effective date the date of the EPA Project  
6 Coordinator's oral direction. Any other requirements of this Settlement Agreement may be  
7 modified in writing by mutual agreement of the parties.

8 100. If Respondent seeks permission to deviate from any approved work plan or schedule  
9 or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA  
10 for approval outlining the proposed modification and its basis. Respondent may not proceed with  
11 the requested deviation until receiving oral or written approval from the EPA Project Coordinator.

12 101. No informal advice, guidance, suggestion, or comment by the EPA Project  
13 Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or  
14 any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any  
15 formal approval required by this Settlement Agreement, or to comply with all requirements of this  
16 Settlement Agreement, unless it is formally modified.

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18 **XXXII. EFFECTIVE DATE**

19 102. The effective date of this Settlement Agreement shall be the date it is signed by  
20 EPA.

21  
22 **XXXIII. NOTICE OF COMPLETION OF WORK**

23 103. When EPA determines, after EPA's review of the Final Focused Remedial  
24 Investigation Report and Final Focused Feasibility Study Report, that all Work has been fully  
25 performed in accordance with this Settlement Agreement, with the exception of any continuing  
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obligations required by this Settlement Agreement, EPA will provide written notice of completion of Work to Respondent.

Agreed this 19 day of January, 2006

For [Respondent]

By: Janet S. Corrigan

Title: President

It is so ORDERED AND AGREED this 8<sup>th</sup> day of March, 2006

By: Kathleen A. Johnson DATE: 3/8/06

Kathleen Johnson  
Chief, Federal Facilities and Site Cleanup Branch  
U.S. Environmental Protection Agency  
Region 9

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**APPENDIX A**  
**STATEMENT OF WORK**  
**FOCUSED REMEDIAL INVESTIGATION AND FEASIBILITY STUDY**  
*Paul McCoy's Laundry and Dry Cleaners, 1624 East Washington Street*  
**PHOENIX, AZ**

**1.0 INTRODUCTION**

This Statement of Work (SOW) outlines the work to be performed by Paul McCoy's Laundry and Dry Cleaners, Inc. ("Respondent") at the Paul McCoy's Laundry and Dry Cleaners Site ("Site") located at 1624 East Washington Street, Phoenix, Arizona, pursuant to the Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") with the United States Environmental Protection Agency (EPA), issued under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This work will be referred to as a Focused Remedial Investigation and Feasibility Study ("Focused RI/FS"). The Focused RI/FS will be conducted to determine if the Site is or has been a source to groundwater contamination associated with the Motorola 52<sup>nd</sup> Street Superfund Site ("52<sup>nd</sup> Street Site") contaminants of potential concern (COPCs) (see Attachment A) and to ensure steps are taken to mitigate any source(s) remaining at the Site.

The Focused RI/FS SOW general requirements are provided in Section 2.0 WORK TO BE CONDUCTED, and the specific work to be conducted is summarized below:

- The Respondent will first conduct a scoping exercise to identify potential COPC sources at the Site, and produce a Work Plan for the Focused RI/FS. (Section 3.0 SCOPING PHASE)

- 1 • The Respondent will next identify and characterize the nature and extent of COPC  
2 sources in the soil and if necessary, in groundwater at the Site according to the Work  
3 Plan. If the results of the initial site characterization indicate sources of COPCs in the  
4 soils and/or groundwater, the Respondent will assess the risks of the identified  
5 contamination to human health and the environment. (Section 4.0 REMEDIAL  
6 INVESTIGATION)  
7
- 8 • Finally, if EPA determines that the risks at the Site are unacceptable, the Respondent will  
9 be required to develop and evaluate remedial alternatives that would mitigate the risks.  
10 (Section 5.0 FEASIBILITY STUDY)  
11

## 12 2.0 WORK TO BE CONDUCTED

13 The Respondent will conduct this Focused RI/FS and will produce deliverables to EPA  
14 for review and approval that are in accordance with the Settlement Agreement, this SOW,  
15 "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA,  
16 U.S. EPA, Office of Emergency and Remedial Response, October 1988" ("RI/FS Guidance"),  
17 presumptive remedy guidance for characterizing and selecting remedies at sites with volatile  
18 organic compounds in soils, and any other guidance documents that are relevant to conducting an  
19 RI/FS. A summary of deliverables is provided in Attachment B and selected guidance and  
20 reference documents are included in Attachment C. **The RI/FS Guidance describes the report  
21 format and the required report content; relevant sections of the guidance are noted  
22 throughout this SOW in parentheses.**  
23

24 The Respondent will furnish all necessary personnel, materials, and services needed, or  
25 incidental to, performing the Focused RI/FS, except as otherwise specified in the Settlement  
26 Agreement. All work performed under this SOW shall be under the direction and supervision of  
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1 qualified personnel. All technical reports and other deliverables shall be prepared under the  
2 direction and supervision of an Arizona Professional Engineer or Registered Geologist.

3       The RI and FS are interactive and may be conducted concurrently so that the data  
4 collected in the RI influences the development of remedial alternatives in the FS, which in turn  
5 affects the data needs and the scope of treatability studies, if they are necessary. In addition,  
6 EPA encourages presumptive remedies for sites with VOCs in soil, which will streamline the FS  
7 process towards remedy selection. The Final Focused RI/FS Report, as adopted by EPA, forms  
8 the basis for the selection of the Site remedy and will provide the information necessary to  
9 support the development of additional Records of Decision for the Motorola 52nd Street  
10 Superfund Site. The remedial action alternative selected by EPA will meet the cleanup standards  
11 specified in CERCLA Section 121.

12       As specified in CERCLA Section 104(a)(1), EPA will provide oversight of the activities  
13 conducted by the Respondent throughout the Focused RI/FS, and the Respondent will support  
14 EPA's implementation of oversight activities. The Respondent shall produce Monthly Progress  
15 Reports according to the requirements in the Settlement Agreement. The following sections  
16 describe the specific deliverables and requirements for the Focused RI/FS.

### 17 3.0 SCOPING PHASE (RI/FS Guidance, Chapter 2)

18       When scoping the specific aspects of a project, the Respondent will discuss with EPA all  
19 project planning decisions and special concerns associated with the Site. The following activities  
20 will be performed by the Respondent as a function of the scoping process:

#### 21 3.1 Site Research (2.2)

22       The Respondent has conducted historical research of potential COPC use and disposal at  
23 the Site, and summarized the results of that research to EPA. This information will be utilized  
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1 to better scope the project and will guide the development of the subsequent Work Plans for  
2 additional data collection necessary to characterize the Site, better define potential applicable or  
3 relevant and appropriate requirements (ARARs), and narrow the range of preliminarily identified  
4 remedial alternatives.  
5

6 Before planning Focused RI/FS activities, all existing information will be thoroughly  
7 compiled and reviewed by the Respondent. Specifically, this will include presently available  
8 information relating to the possible varieties and quantities of hazardous substances at the Site,  
9 and past disposal practices. The research is expected to include records reviews and employee  
10 interviews, and results from any previous sampling events that may have been conducted. The  
11 Respondent will refer to Table 2-1 of the RI/FS Guidance for a comprehensive list of data  
12 collection information sources. The Respondent shall use this information to develop a  
13 conceptual understanding of the Site, i.e., operations, COPC uses and disposal, and potential  
14 migration pathways. The Respondent(s) shall establish Data Quality Objectives (DQOs) subject  
15 to EPA approval which specify the usefulness of existing data. Decisions on the necessary data  
16 and DQOs will be made by EPA.  
17  
18

19 The Respondent will also conduct a Site visit during the project scoping phase to assist in  
20 developing a conceptual understanding of sources and areas of COPC contamination as well as  
21 potential exposure pathways and receptors at the Site. The Respondent should observe the area's  
22 physiography, hydrology, geology, and demographics, as well as natural resource, ecological and  
23 cultural features.  
24

### 25 3.2 Project Planning (2.2)

26 The Respondent will plan the specific project scope after the Site Research tasks  
27 described in Section 3.1 are completed. Project planning activities include those tasks described  
28

1 below such as identifying data needs, developing a work plan, designing a data collection  
2 program and identifying health and safety protocols. The Respondent will confer with EPA  
3 regarding activities described in the subsections below and before the drafting of the scoping  
4 deliverables.  
5

#### 6 3.2.1 Refine and Document Preliminary Remedial Action Objectives and Alternatives (2.2.3)

7 The Respondent shall develop preliminary remedial action objectives (RAOs) for each  
8 potentially contaminated medium and identify a preliminary range of remedial action alternatives  
9 and associated technologies for protecting human health and the environment. Respondent will  
10 document the preliminary RAOs and alternatives in the Focused Remedial  
11 Investigation/Feasibility Study Work Plan described in Section 3.3.1.  
12

13 The RAOs should present potential exposure route(s) and receptor(s) and an acceptable  
14 contaminant level or range of levels for each potential exposure route. The RAOs should be  
15 specific as possible, but not so specific that the range of potential alternatives are limited. These  
16 RAOs are preliminary objectives, and are not final remediation goals, levels or standards. RAOs  
17 are revised throughout the Focused RI/FS process, and are typically finalized and documented in  
18 the Record of Decision (ROD). The RAOs are relevant to the Site source areas and do not need  
19 to include RAOs for addressing the regional groundwater for the Motorola 52nd Street Superfund  
20 Site OU3 study area. Preliminary RAOs can be either ARARs of other Federal and State  
21 environmental laws or risk-based concentrations. Examples of Federal and State site  
22 characterization screening levels and remedial action levels for various environmental media are  
23 provided in Attachment A for reference and guidance in refining the investigation screening  
24 levels and RAOs for the Site.  
25  
26

27 The Respondent will also include objectives for the use of institutional controls. The  
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1 Respondent will then identify a preliminary range of broadly defined potential remedial action  
2 alternatives, associated technologies, and institutional controls, if necessary. The range of  
3 potential alternatives should encompass where appropriate, alternatives in which treatment  
4 significantly reduces the toxicity, mobility, or volume of the waste; alternatives that involve  
5 containment with little or no treatment; and a no-action alternative. The Respondent should  
6 consider all presumptive site characterization and remedy selection guidance available for sites  
7 contaminated with COPCs.  
8

#### 9 3.2.2 Document the Need for Treatability Studies (2.2.4)

10 If remedial actions involving treatment for COPCs have been identified by the  
11 Respondent or EPA, treatability studies will be required except where the Respondent can  
12 demonstrate to EPA's satisfaction that they are not needed. Where treatability studies are needed,  
13 plans for initial treatability testing activities (such as research and study design) will be submitted  
14 in a Technical Memorandum according to the Settlement Agreement.  
15

#### 16 3.2.3 Begin Preliminary Identification of Potential ARARs (2.2.5)

17 The Respondent will conduct a preliminary identification of potential state and federal  
18 ARARs (chemical-specific, location-specific and action-specific) to assist in the refinement of  
19 RAOs, and the initial identification of remedial alternatives and ARARs associated with  
20 particular actions. ARAR identification will continue as Site conditions, contaminants, and  
21 RAOs are better defined. Respondent will indicate the initial results of this review in the Focused  
22 Remedial Investigation/Feasibility Study Work Plan, and continue to revise in deliverables  
23 throughout the Focused RI/FS process.  
24

#### 25 3.3 Planning Deliverables (2.3)

26 At the conclusion of the project planning phase, the Respondent will submit a Focused  
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1 RI/FS Work Plan which includes a sampling and analysis plan and health and safety plan. These  
2 planning documents must be approved by EPA prior to the initiation of field activities. These  
3 deliverables are described in detail in the following subsections.

#### 4 3.3.1 Focused RI/FS Work Plan (2.3.1)

5 Respondent will submit to EPA a Draft Focused Remedial Investigation/Feasibility Study  
6 Work Plan ("WP") within sixty (60) days of the Settlement Agreement Effective Date. The WP  
7 will document the decisions and evaluations completed during the scoping process. The RI and  
8 FS activities that the WP shall address are described in more detail in Sections 4.0 and 5.0. The  
9 WP should be developed in conjunction with the sampling and analysis plan and the health and  
10 safety plan, although each plan may be delivered under separate cover. The WP will include a  
11 statement of the problem(s) and potential problem(s) posed by the Site and the objectives of the  
12 Focused RI/FS, a comprehensive description of the work to be performed to meet those  
13 objectives, including the methodologies to be utilized and the rationale for performing the  
14 required activities, as well as a corresponding schedule for completion. Twenty-one (21) days  
15 following comment by EPA, the Respondent will submit a Final WP, which satisfactorily address  
16 EPA's comments.

17 The following Site data previously collected and submitted to EPA by Respondent will be  
18 included in the WP: a background summary setting forth the description of the Site, including the  
19 geographic location, and to the extent possible, a description of the Site physiography, hydrology,  
20 geology, demographics, ecological, cultural and natural resource features; a synopsis of the Site  
21 history and a description of previous responses that have been conducted at the Site by local,  
22 state, federal, or private parties; and a summary of the existing data in terms of physical and  
23 chemical characteristics of the contaminants identified, and their distribution among the  
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1 environmental media at the Site. In addition, the Respondent will include in the WP a  
2 description of the Site management strategy discussed with EPA during scoping, a preliminary  
3 identification of remedial alternatives, data needs for evaluation of remedial alternatives, a  
4 process for and manner of identifying Federal and State ARARs (chemical-specific,  
5 location-specific and action-specific), and will reflect coordination with treatability study  
6 requirements, if needed.  
7

8         The Respondent will present in the WP a discussion of the preliminary conceptual site  
9 model. The Respondent will identify any known or suspected sources of COPC contamination,  
10 types of contaminants and affected media, fate and transport of each contaminant in each  
11 medium and any known or potential human or environmental receptors. The Respondent will  
12 refine the conceptual site model as new data become available and present it in the Focused  
13 Remedial Investigation Report (see Section 4.3). The conceptual site model will be based on the  
14 research and work previously completed in conjunction with prior investigations and  
15 supplemented by new data, if any, obtained during scoping. The site model shall include detailed  
16 descriptions of the configuration, operation, and historical uses of the potential source areas,  
17 detailed maps depicting all existing buildings and other Site features of interest, figures, and  
18 tables depicting the layout, locations, and uses of Site features, and any recommendations for  
19 investigation of the areas.  
20  
21

22         The Respondent will also identify the current use of the Site in accordance with EPA's  
23 "Land Use in CERCLA Remedy Selection Process," OSWER Directive No. 9355.7-04, May 25,  
24 1995 (hereinafter the "Land Use Guidance"), including the use(s) of property located over any  
25 ground water plume, if applicable, and will state the basis for these determinations. Information  
26 regarding existing uses of the Site should also be gathered to assist in identifying the reasonably  
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1 anticipated future uses. If EPA determines it is appropriate, Respondent shall conduct a reuse  
2 assessment in accordance with the Land Use Guidance and "Reuse Assessments: A Tool to  
3 Implement the Superfund Land Use Directive," OSWER 9355.7-06P, June 4, 2001, to identify  
4 the reasonably anticipated future use of the Site. Respondent shall document the reuse  
5 assessment in the WP, if conducted.

7 Finally, the major part of the WP is a detailed description of the tasks to be performed,  
8 information needed for each task, information to be produced during and at the conclusion of  
9 each task, and a description of the work products that will be submitted to EPA. This includes  
10 the deliverables set forth in the remainder of this statement of work; a schedule for each of the  
11 required activities which is consistent with the RI/FS guidance; and a project management plan,  
12 including a data management plan (e.g., requirements for project management systems and  
13 software, minimum data requirements, data format and backup data management), and reports,  
14 meetings and presentations to EPA at the conclusion of each major phase of the Focused RI/FS.  
15 The Respondent will refer to Appendix B of the RI/FS Guidance for a comprehensive description  
16 of the contents of the required WP.

19 Because of the unknown nature of the Site and iterative nature of the RI/FS process,  
20 additional data requirements and analyses may be identified by EPA and/or the Respondent. The  
21 Respondent will submit a Technical Memorandum documenting the need for additional data  
22 requirements, if any, within twenty-one (21) days of identification according to the Settlement  
23 Agreement. Upon EPA approval, Respondent will incorporate the Technical Memorandum into  
24 the WP. The Respondent is responsible for fulfilling and identifying the Data Quality Objectives  
25 (DQOs) described in the next section whenever such additional data and analysis needs are  
26 identified.

1 3.3.2 Sampling and Analysis Plan (2.3.2)

2 The Respondent will submit a sampling and analysis plan (SAP) within sixty (60) days of  
3 the Settlement Agreement Effective Date. The SAP is produced to ensure that sample collection  
4 and analytical activities are conducted in accordance with technically acceptable protocols and  
5 that the data meet DQOs. The SAP provides a mechanism for planning field activities and  
6 consists of a field sampling plan (FSP) and a quality assurance project plan (QAPP).

7  
8 In the FSP, the Respondent will define in detail the sampling and data-gathering methods  
9 that will be used on the project. Respondent will include sampling objectives, sample location  
10 and frequency, sampling equipment and procedures, and sample handling and analysis. In the  
11 QAPP, Respondent will describe the project objectives and organization, functional activities,  
12 and quality assurance and quality control (QA/QC) protocols that will be used to achieve the  
13 desired DQOs. Respondent will prepare the QAPP in accordance with "Guidance for Data  
14 Quality Objectives (DQOs) Process (QA/G-4)" (EPA/600/R-96/055, August 2000), "EPA  
15 Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001),  
16 and "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December  
17 2002). In addition, Respondent will address in the QAPP sampling procedures, sample custody,  
18 analytical procedures, and data reduction, validation, reporting and personnel qualifications.

19  
20 The Respondent will demonstrate to EPA's satisfaction that each laboratory it may use is  
21 qualified to conduct the proposed work. The Respondent will only use laboratories that have a  
22 documented Quality Assurance Program that complies with EPA and State requirements. The  
23 laboratory QA program must be submitted to EPA. This includes use of methods and analytical  
24 protocols for the COPCs in the media of interest within detection and quantification limits  
25 consistent with both QA/QC procedures and DQOs approved in the QAPP for the Site by EPA.  
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1 EPA may require that the Respondent submit detailed information to demonstrate that the  
2 laboratory is qualified to conduct the work, including information on personnel qualifications,  
3 equipment and material specifications. The Respondent will provide assurances that EPA has  
4 access to laboratory personnel, equipment and records, sample collection, transportation and  
5 analysis. Finally, laboratories must provide data according to "Laboratory Documentation  
6 Requirements for Data Validation Packages", July 1997 (EPA 9QA-07-97) or other equivalent  
7 documentation as determined by EPA.  
8

### 9 3.3.3 Site Health and Safety Plan (2.3.3)

10 The Respondent will submit a health and safety plan (HASP) within sixty (60) days of the  
11 Settlement Agreement Effective Date prepared in conformance with the health and safety  
12 program of the Respondent, and in compliance with Occupational Safety and Health  
13 Administration (OSHA) regulations and protocols. The HASP will include the 11 elements  
14 described in the RI/FS Guidance, such as a health and safety risk analysis, a description of  
15 monitoring and personnel protective equipment, medical monitoring, and site control. It should  
16 be noted that EPA does not "approve" the HASP, but rather EPA reviews it to ensure that all  
17 necessary elements are included, and that the plan provides for the protection of human health  
18 and the environment.  
19

### 20 3.4 Community Involvement

21 The development and implementation of community involvement activities for the  
22 Focused RI/FS are the responsibility of EPA. The critical community involvement planning  
23 steps performed by EPA include conducting community interviews and developing and updating  
24 a community involvement plan (CIP). Although implementation of the CIP is the responsibility  
25 of EPA, the Respondent may assist by providing information regarding the Site's history,  
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1 participating in public meetings, or by preparing fact sheets for distribution to the general public.

2 The extent of Respondent involvement in community involvement activities is left to the  
3 discretion of EPA. Community involvement activities conducted by Respondent will be subject  
4 to oversight by EPA.  
5

#### 6 4.0 REMEDIAL INVESTIGATION (RI/FS Guidance, Chapter 3)

7 During this phase of the Focused RI/FS, the Respondent will begin to implement the  
8 approved WP and SAP. The RI activities will include performance of the field activities  
9 described in the subsections below including preparation and submission of a Focused Remedial  
10 Investigation Report (FRIR) (see Section 4.3). The overall objective of this phase is to collect  
11 data to describe the COPC source areas at the Site that may pose a threat to human health or the  
12 environment, if any exist. This is accomplished by first determining the physiography, geology,  
13 and hydrology at the Site. The Respondent will identify the Site sources of COPC contamination  
14 and define the nature, extent, and volume of the sources of contamination, including their  
15 physical and chemical constituents as well as their concentrations at incremental locations to  
16 background in the affected media. The Respondent will also investigate the extent of migration  
17 of the contamination, including surface and subsurface pathways of migration, as well as its  
18 volume and any changes in its physical or chemical characteristics, to provide for a  
19 comprehensive understanding of the nature and extent of contamination at the Site. Using this  
20 information, contaminant fate and transport is then determined and projected. A focused risk  
21 assessment is then conducted considering the chemical concentrations detected and/or projected  
22 in the subsurface.  
23  
24  
25

26 The Respondent will collect and analyze field data to provide the information required to  
27 accomplish the objectives of the study. In view of the unknown Site conditions, activities are  
28

1 often iterative, and to satisfy the objectives of the Focused RI/FS it may be necessary for the  
2 Respondent to supplement the work specified in the initial WP. As described in Section 3.3.1 this  
3 may be done through submission of Technical Memorandums either initiated by the Respondent  
4 or requested by EPA.  
5

#### 6 4.1 Field Investigation (3.2)

7 The field investigation includes the gathering of data to define Site physical and  
8 biological characteristics, sources of contamination, and the nature and extent of contamination  
9 at the Site. The Respondent will perform these activities in accordance with the WP, SAP, and  
10 HASP. The Respondent will notify EPA with a Notification of Initiation of Field Work (FW) at  
11 least fifteen (15) days prior to initiating any physical work in the field. The Notification will  
12 include the planned dates for field activities so that EPA may adequately schedule oversight  
13 tasks. The Respondent will notify EPA in writing within five (5) days of completion of field  
14 work activities, with a Notification of Completion of Field Work. Upon submission of the  
15 Notification of Field Work, Respondent will provide Weekly Progress Reports according to the  
16 requirements in the Settlement Agreement. Weekly Progress Reports may be discontinued upon  
17 Notification of Completion of Field Work (see Section 4.1).  
18

##### 19 4.1.1 Field Support Activities (3.2.1)

20 The Respondent may initiate some types of field support activities prior to initiation of  
21 physical work in the field. Field support activities may include obtaining access to the Site,  
22 scheduling, and procuring equipment, office space, laboratory services, and/or contractors.  
23 These activities may occur prior to the approval of the WP as well as after initiation of physical  
24 work according to the schedule in the WP. Physical field support type work activities associated  
25 with sampling, such as field lay out of the sampling grid, initiating sampling, installation and  
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1 calibration of equipment, initiation of analysis, etc., shall not occur until EPA approval of the  
2 WP. Respondent will document these types of activities in the Monthly or Weekly progress  
3 reports, as appropriate, according to the requirements in the Settlement Agreement.

#### 4 4.1.2 Physical and Biological Characteristics (3.2.2)

5  
6 The Respondent will collect data on the physical and biological characteristics of the Site  
7 and surrounding areas including the physiography, geology, and hydrology, and specific physical  
8 characteristics identified in the WP. The Respondent will ascertain this information through a  
9 combination of physical measurements, observations, and sampling efforts and the Respondent  
10 will utilize the information to define potential transport pathways and human and ecological  
11 receptor populations. In defining the Site's physical characteristics, the Respondent will also  
12 obtain sufficient engineering data for the projection of contaminant fate and transport, and  
13 development and screening of remedial action alternatives, including information to assess  
14 treatment technologies.

#### 15 4.1.3 Sources of Contamination (3.2.3)

16  
17 The Respondent will locate each source of COPC contamination. For each location, the  
18 areal extent and depth of contamination will be determined by sampling at incremental depths on  
19 a sampling grid, or appropriately targeted locations based on the Conceptual Site Model (CSM)  
20 developed in the WP, and refined throughout the RI. Respondent will determine the physical  
21 characteristics and chemical constituents and their concentrations for all known and discovered  
22 sources of COPC contamination. The Respondent will conduct sufficient sampling to define the  
23 boundaries of the contaminant sources to the level established in the QAPP and DQOs.

24 In defining the sources of COPC contamination, Respondent will analyze the potential for  
25 contaminant release (e.g., long term leaching from soil), contaminant mobility and persistence,  
26  
27  
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1 and characteristics important for evaluating remedial actions, including information to assess  
2 treatment technologies.

#### 3 4.1.4 Nature and Extent of Contamination (3.2.4)

4  
5 As a final step during the field investigation, the Respondent will gather information to be  
6 able to describe the nature and extent of COPC contamination in the FRIR. To describe the  
7 nature and extent of Site contamination, the Respondent will utilize the information on physical  
8 and biological characteristics and sources of COPC contamination to give a preliminary estimate  
9 of the contaminants that may have migrated. The Respondent will then implement an iterative  
10 monitoring program and any study program identified in the WP or SAP such that by using  
11 analytical techniques sufficient to detect and quantify the concentration of contaminants, the  
12 migration of contaminants through the various media at the Site can be determined.

13  
14 In addition, the Respondent will gather data for calculations of contaminant fate and  
15 transport. This process is continued until the area and depth of contamination are known to the  
16 level of contamination established in the QAPP and DQOs. The Respondent will use the  
17 information on the nature and extent of contamination to determine the level of risk presented by  
18 the Site, and determine aspects of the appropriate remedial action alternatives to be evaluated.

#### 19 4.2 Data Analyses/Evaluate Site Characteristics (3.4.1)

20  
21 The Respondent will analyze and evaluate the data in order to be able to describe in the  
22 FRIR: (1) Site physical and biological characteristics, (2) contaminant source characteristics, (3)  
23 nature and extent of contamination (4) contaminant fate and transport, and (5) risks to human  
24 health and the environment. These elements are described in the subsections below:

##### 25 4.2.1 Site Characteristics (3.4.1)

26  
27 The Respondent will utilize the results of the Site physical characteristics, source  
28

1 characteristics, and extent of contamination analyses in the analysis of contaminant fate and  
2 transport. The evaluation will include the actual and potential magnitude of releases from the  
3 sources, and horizontal and vertical spread of contamination as well as mobility and persistence  
4 of contaminants.  
5

6 Where modeling is appropriate, Respondent will identify such models to EPA in the WP  
7 and if necessary, as supplemented by a Technical Memorandum. All data and programming,  
8 including any proprietary programs, will be made available to EPA together with a sensitivity  
9 analysis. The Respondent will agree to discuss and then collect any data gaps identified by the  
10 EPA that are needed to complete the risk assessment. (See "Guidance for Data Usability in Risk  
11 Assessment - OSWER Directive #9285.7-05, October 1990.)  
12

13 Also, Respondent will provide in this evaluation any information relevant to Site  
14 characteristics necessary for evaluation of the need for remedial action in the risk assessment and  
15 for the development and a evaluation of remedial alternatives. Analyses of data collected for Site  
16 characterization will meet the DQOs developed in the QAPP stated in the SAP (or revised during  
17 the RI).  
18

#### 19 4.2.2 Risk Assessment (3.4.2)

20 Respondent will submit a Focused Risk Assessment (FRA) in the FRIR and evaluate  
21 baseline COPC conditions as developed through the field investigations and data analysis. In the  
22 assessment, Respondent will consider both current and possible future uses of the Site. The FRA  
23 will identify possible exposure pathways, evaluate contaminant fate and transport, and if  
24 necessary, estimate points of exposure and characterize health risks. Respondent will base  
25 exposure scenarios on land and groundwater use assumptions that will be developed in  
26 collaboration with the EPA.  
27  
28

1 4.2.3 Data Management Procedures (3.5)

2 The Respondent will consistently document the quality and validity of field and  
3 laboratory data compiled during the RI according to the procedures established in the WP. The  
4 following subsections describe the data management procedures expected throughout the  
5 Focused RI/FS:  
6

7 4.2.3.1 Document Field Activities (3.5.1)

8 The Respondent will ensure that all information gathered during Site characterization will  
9 be consistently documented and adequately recorded by the Respondent in well maintained field  
10 logs and laboratory reports. The method(s) of documentation must be specified in the WP and/or  
11 the SAP. Field logs must be utilized to document observations, measurements, and significant  
12 events that have occurred during field activities. Laboratory reports must document sample  
13 custody, analytical responsibility, analytical results, adherence to prescribed protocols,  
14 nonconformity events, corrective measures, and/or data deficiencies. Ultimately, these documents  
15 will be compiled and submitted to EPA as appendices to the FRIR; however, they may be  
16 requested by EPA throughout performance of the RI activities and/or in the Weekly Progress  
17 Reports.  
18  
19

20 4.2.3.2 Sample Management and Tracking (3.5.2; 3.5.3)

21 The Respondent will maintain field reports, sample shipment records, analytical results,  
22 and QA/QC reports to ensure that only validated analytical data are reported and utilized in the  
23 development and evaluation of remedial alternatives. Analytical results developed under the WP  
24 will not be included in any site characterization reports unless accompanied by or  
25 cross-referenced to the corresponding QA/QC report.  
26

27 In addition, the Respondent will establish a data security system to safeguard chain-of-  
28

1 custody forms and other project records to prevent loss, damage, or alteration of project  
2 documentation.

#### 3 4.2.3.3 Database Management 4

5 If groundwater data is collected, the Respondent will maintain this data in an electronic  
6 database, the Respondent will comply with the most recent Arizona Department of  
7 Environmental Quality Groundwater Data Submittal Guidance Document, currently Version 3.1,  
8 dated December 2003, and any additional requirements EPA deems necessary.

#### 9 4.3 Focused Remedial Investigation Report (3.7.3) 10

11 The Respondent will submit a Draft Focused Remedial Investigation Report (FRIR) to  
12 EPA within 60 days of Notification of Completion of Fieldwork. In the FRIR Respondent will  
13 review and summarize results of activities conducted in the previous subsections to characterize  
14 and assess the risks to human health and the environment at the Site. Respondent will include an  
15 updated of the site conceptual model and will evaluate the risks to human health and the  
16 environment through a FRA. For example, the FRIR will describe and display site data  
17 documenting the location and characteristics of surface and subsurface features and  
18 contamination at the Site, such as sources of contamination, nature and extent of contamination  
19 and the fate and transport of contaminants. The Respondent will refer to the RI/FS Guidance for  
20 an outline of the FRIR format and contents. Twenty-one (21) days following comment by EPA,  
21 the Respondent will submit a Final FRIR which satisfactorily address EPA's comments.  
22

#### 23 5.0 FEASIBILITY STUDY (RI/FS Guidance, Chapter 4) 24

25 If EPA determines that the results of the FRIR identify risks to human health and/or the  
26 environment, the Respondent will conduct an evaluation of the remedial alternatives that will  
27 address those risks and complete a Focused Feasibility Study (FFS) for EPA to use in  
28

1 determining the remedy for the Site. The following activities detail the FFS process:

## 2 5.1 Development and Screening of Remedial Alternatives (4.2)

3 The Respondent will develop and evaluate a range of appropriate waste management  
4 options that at a minimum ensure protection of human health and the environment, concurrent  
5 with the RI Site characterization task. This range of alternatives should include as appropriate,  
6 options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but  
7 varying in the types of treatment, the amount treated, and the manner in which long-term  
8 residuals or untreated wastes are managed; options involving containment with little or no  
9 treatment; options involving both treatment and containment; and a no-action  
10 alternative. Respondent should consider guidance related to presumptive remedies for COPCs in  
11 soils. The results of this will provide a basis for completion of the next subtask.

## 14 5.2 Detailed Analysis of Remedial Alternatives (RI/FS Guidance, Chapter 6)

15 The Respondent will conduct a detailed analysis of the remedial alternatives screened in  
16 the previous subtask. The detailed analysis will consist of an analysis of each option against the  
17 set of nine evaluation criteria and a comparative analysis of all options using the same evaluation  
18 criteria as a basis for comparison: (1) overall protection of human health and the environment;  
19 (2) compliance with ARARS; (3) long-term effectiveness and permanence; (4) reduction of  
20 toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) cost; (8)  
21 state (or support agency) acceptance; and (9) community acceptance. Criteria 8 and 9 may be  
22 considered after the FFS Report has been released to the general public. If any of the retained  
23 remedial alternatives includes institutional controls which require state or community  
24 participation to implement, monitor, or enforce, then state and community acceptance must be  
25 determined prior to public release of the FFS Report. This analysis is the final task to be  
26  
27  
28

1 performed by the Respondent during the FFS, and will be submitted as part of the Final FFS  
2 Report.

3 5.3 Focused Feasibility Study Report (6.5)

4 The Respondent will submit a Draft FFS Report (FFSR) to EPA within sixty (60) days of  
5 EPA approval of the FRIR. This FFSR, as ultimately adopted or amended by EPA, provides a  
6 basis for remedy selection by EPA and documents the development and analysis of remedial  
7 alternatives. The Respondent will refer to the RI/FS Guidance for an outline of the FFSR format  
8 and the required report content. The Respondent will submit a Final FFSR within twenty-one  
9 (21) Days of EPA comments. Once EPA's comments are addressed by the Respondent to EPA's  
10 satisfaction, the Final FFSR may be bound with the FRIR.  
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----- ATTACHMENT A -----  
**CONTAMINANTS OF POTENTIAL CONCERN (COPC'S)**  
*Potential Site Characterization Screening Levels and Remedial Action Levels*

Data Sources: 1EPA Region 9 PRGs Table, 10/20/04 2ADHS 1999 Update AAAQGs, 5/11/99 3ADHS Draft Arizona Ambient Air HGBLs, 5/11/99 4EPA Draft Subsurface Vapor Intrusion Guidance, Table 2c, 11/29/02 5ADEQ A Screening Method to Determine Soil Concentrations Protective of Groundwater Quality, 09/96 ----- Chemical Name	Air (µg/m³)			Soil (mg/kg)				Soil Gas (µg/m³)	Groundwater (µg/L)				
	Direct Contact Exposure Pathways						Migration to Groundwater		Migration to Indoor Air (Vapor Intrusion)	Direct Contact Exposure Pathway		2002 Max. Detections	
	Annual 30 yr.	Annual 70 yr.-24 Hour		Residential. - Non Res.		EPA PRG¹				EPA MCL/ ADEQ AWQS			
	EPA PRG¹	AAAQGs Annual-24 Hour²	ADHS HBGLs³	EPA PRGs¹	ADEQ SRLs	EPA SSLs DAF 1-20¹	ADEQ GPLs⁵	EPA SSLs⁴ AF 0.1; 1x10⁻⁶ risk	EPA PRG¹ (Tap Water)		OU2 Area	OU3 Area	
Chloroethane/Ethyl Chloride (CA)	2.3	N/A	4300-43000	3.0 - 6.5	1100-4200	N/A	N/A	100000	4.6	N/A	160	NS	
1,1-Dichloroethane (1,1-DCA)	520	N/A-3200	210-2100	510-1700	500-1700	1.0-23	N/A	5000	810	N/A	110	50	
1,2-Dichloroethane (1,2-DCA)	0.074	0.038-14	0.73-43	0.28 - 0.60	2.5-5.5	0.001-0.02	0.21	0.94	0.12	5	ND	0.6	
1,1-Dichloroethylene (1,1-DCE)	210	N/A-63	0.38-140	120 - 410	0.36-0.8	0.003-0.06	0.81	2000	340	7	130	60	
cis-1,2-Dichloroethylene (cis-1,2-DCE)	37	N/A-6300	15-150	43-150	31-100	0.02-0.4	4.9	N/A	61	70	220	150	
trans-1,2-Dichloroethylene (trans-1,2-DCE)	73		30-300	69-230	78-270	0.03-0.7	8.4	N/A	120	100	1.4	3	
Tetrachloroethylene (PCE)	0.032	1.7-640	15-150	0.48-1.3	53-170	0.003-0.06	1.3	8.1	0.10	5	15	19	
1,1,1-Trichloroethane (1,1,1-TCA)	2300	N/A-15000	430-4300	1200	1200-4800	0.1-2	1.0	22000	3200	200	2.4	ND	
1,1,2-Trichloroethane (1,1,2-TCA)	0.12	0.062-23	1.2-60	0.73-1.6	6.5-15	0.0009-0.02	N/A	1.5	0.2	5	ND	ND	
Trichloroethylene (TCE)	0.017	0.58-210	9-90	0.053-0.11	27-70	0.003 - 0.06	0.61	22	0.028	5	650	720	
Vinyl Chloride/Chloroethylene (CE)	0.11	0.012-4.3	0.02-N/A	0.079-0.75	0.016-0.035	0.0007-0.01	N/A	2.8	0.02	2	16	0.3	
1,4-Dioxane	0.61	N/A-710	6-N/A	44-160	400-1700	N/A	N/A	N/A	6.1	N/A	11	12	

List of Acronyms:

EPA = EPA Region 9

AAAQGs = Arizona Ambient Air Quality Guidelines

SSL = Soil Screening Levels

AF = Soil Gas to Indoor Air Attenuation Factor

AWQS = AAC Aquifer Water Quality Standards

ADEQ = Arizona Department of Quality

PRG = Preliminary Remediation Goal

GPL = Groundwater Protection Levels

MCL = National Primary Drinking Water Standards Maximum Contaminant Level

N/A = Not Available

ADHS = Arizona Department of Health Services

SRL = Soil Remediation Levels, Arizona Administrative Code (AAC) Title 18, Ch. 7 Appendix A

DAF = Dilution Attenuation Factor

ND = Non Detect

NS = Not Sampled



-----ATTACHMENT B-----

SUMMARY OF DELIVERABLES

SOW Section	Submittals and Deliverables	Due Date
2.0	Monthly Progress Reports	Each month after ED
3.3.1	Draft Focused RI/FS Work Plan (WP)*	60 days after ED
3.3.1	Technical Memorandums (to supplement WP)	Within 21 days as identified or requested
3.3.2	Draft Sampling and Analysis Plan (SAP)*	60 days after ED
3.3.3	Draft Site Health and Safety Plan (HASP)*	60 days after ED
4.1	Notification of Initiation of Field Work (FW)	15 days in advance
4.1	Weekly Progress Reports	Each week during FW
4.1	Notification of Completion of Field Work (FW)	5 days after completion of FW
4.3	Draft Focused Remedial Investigation Report (FRIR)*	60 days after completion of FW
5.3	Draft Focused Feasibility Study Report (FFSR)*	60 days after approval of Final FRIR
3.3.1 4.3 5.3	*Final Deliverables	21 days after receipt of EPA comment

----- ATTACHMENT C -----

REFERENCES

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process:

"The National Oil and Hazardous Substances Pollution Contingency Plan" Final Rule, Federal Register 40 CFR Part 300, March 8, 1990.

"Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA," U.S. EPA, Office of Emergency and Remedial Response, Interim Final, OSWER Directive No. 9355.3-01, EPA-540-G-89-004, October 1988.

"Interim Guidance on Potentially Responsible Party Participation in Remedial Investigation and Feasibility Studies," U.S. EPA, Office of Waste Programs Enforcement, Appendix A to OSWER Directive No. 9355.3-01.

"Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies," Volume I, U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.1(c), July 1, 1991.

"Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies, Volume II" U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.1(d), July 1, 1991.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

Mail Code: ORC 3-1

March 9, 2006

BY EXPRESS MAIL

Anthony W. Merrill  
Bryan Cave, LLP  
One Renaissance Square  
2 North Central Avenue, Suite 2200.  
Phoenix, Arizona 85004-4406

Re: Motorola 52<sup>nd</sup> Street Superfund Site: Paul McCoy's Laundry

Dear Mr. Merrill:

Please find enclosed the final signed Administrative Settlement Agreement and Order on Consent for a Remedial Investigation/Feasibility Study ("Settlement Agreement") in the above referenced matter. Thank you for all your help in resolving this matter. We look forward to working with your client in implementing the Settlement Agreement. Please call Nadia Hollan at (415) 972-3187 if you have any technical questions concerning the Settlement Agreement. Please call Bethany Dreyfus at (415) 972-3886 with any legal questions. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Michele Benson".

Michele Benson  
Assistant Regional Counsel

cc: Nadia Hollan  
Bethany Dreyfus

w/encl.